

Message Text

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ACTION ARA-10

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C O N F I D E N T I A L LIMA 2013

FOR ARA - WILLIAM ROGERS; L - MONROE LEIGH; EB - PAUL
BOEKER; TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE;
COMMERCE - DAN ARRILL

EO 11652: GDS

TAGS: EMIN, EIND, EINV, PFOR, PE

SUBJECT: MARCONA NEGOTIATIONS - MONDAY SESSIONS

1. SUMMARY: U.S. GROUP MET WITH PERUVIAN COMMISSION
(DE LA PUENTE, BORUSSET, YATACO, DELGADO, RUIZ DE CASTILLO,
RUBINA) IN TWO LENGTHY SESSIONS. FIRST (MORNING) MEETING
WAS A TESTING OF WATERS THAT BROKE NO NEW GROUND; FISHLOW
REPEATED EARLIER POSITION HOLDING THAT SERIOUS NEGOTIATIONS
COULD NOT BEGIN, AND USG COULD NOT ENCOURAGE MARCONA TO
BE FLEXIBLE, UNTIL GOP CAME UP WITH A FIRM \$30 MILLION
OFFER. SECOND (EVENING) SESSION (FOLLOWING GOP COMMISSION
MEETING WITH MINISTERS) WAS MOST TENSE OF RECENT TRIPS.
GOP CAME UP WITH FIRM \$19 MILLION WITH CLEARLY HINTED POS-
SIBILITIES OF MORE THROUGH TAX CLAIMS AND DEPLETION COURT
CASE, COMBINED WITH STRONG PITCH ON HOW FAR GOP HAD GONE.
FISHLOW SUGGESTED THERE WAS NO POINT IN CONTINUING
UNLESS GOP COULD DO BETTER, SHOW MUCH MORE FLEXIBILITY
AND UNDERSTANDING OF REQUIREMENTS OF U.S. POSITION.
U.S. GROUP ALSO MET TWICE WITH MARCONA, AND MARCONA COUNSEL
PRESENTED MATERIAL ON FOUR TAX CLAIMS (DEMURRAGE, FOREIGN
HIRE BONUSES, FREIGHT TAX, PURCHASING COMMISSIONS) TO
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TAX AUTHORITIES. END SUMMARY.

2. MORNING COMMISSION MEETING. INITIAL SESSION ATTENDED BY GOP COMMISSION, U.S. GROUP AND EMBASSY REPRESENTATIVES, ESSENTIALLY A TESTING SESSION, TO DETERMINE IF SECRETARY'S VISIT HAD SOFTENED U.S. POSITION. IN COURSE OF EXTENSIVE DISCUSSIONS, FISHLOW REITERATED EARLIER POSITION MARKING \$30 MILLION FIRM GOP OFFER AS PRECONDITION FOR SERIOUS NEGOTIATIONS, STRESSING VALUABLE NATURE OF MARCONA PROPERTIES AND FACT THAT ONLY TEN DAYS LEFT TO REACH SETTLEMENT. HE EMPHASIZED THAT GOP'S FAILURE TO INCREASE ITS OFFER REINFORCED MARCONA'S IMPRESSION THAT GOP NOT PREPARED TO PAY A JUST PRICE, AND MADE IT IMPOSSIBLE FOR USG TO ENCOURAGE FLEXIBILITY ON MARCONA'S PARTY. FISHLOW ALSO DESCRIBED VARIOUS POSSIBILITIES FOR INDIRECT NON-CASE ELEMENTS WHICH COULD BE PART OF FINAL SETTLEMENT: EXTENSION OF SHIPPING AGREEMENTS, PURCHASING, SALES ASSISTANCE, PAYMENT IN ORE (PELLETS). GOP COMMISSION RECOGNIZED THAT SUCH ELEMENTS HAD POSSIBILITIES, BUT REFUSED TO ACCEPT THEM AS RATIONALE FOR INCREASED COMPENSATION. BROUSSET SOUGHT TO TREAT DEPELTION CLAIM AS SEPARATE ISSUE (SEE BELOW) AND AGAIN STATED THAT OTHER TAX CLAIMS WOULD BE TREATED JUSTLY BY TAX AUTHORITIES (NOTING MARCONA'S COMPLIANCE WITH REQUEST TO PRESENT INFORMATION DIRECTLY). FISHLOW STRESSED REPEATEDLY NEED TO COMPLY WITH U.S. AS WELL AS PERUVIAN LEGAL REQUIREMENTS, THAT BOOK VALUE ALONE IS NOT ENOUGH AND MUST BE AUGMENTED, AND THROUGH ONGOING RELATIONSHIP PROVIDING ADDITIONAL ELEMENTS OF COMPENSATION.

3. FREIGHT CONTRACT PROBLEMS ALSO DISCUSSED BRIEFLY. RUIZ DE CASTILLO NOTED THAT CPV HAD OFFERED TO LET MARCONA BID ON 50 PERCENT OF ARGENTINE CONTRACT REQUIREMENTS OVER WHICH GOP HAD CONTROL UNDER BILATERAL TRADE AGREEMENT. FISHLOW STRESSED IMPORTANCE OF COMPLIANCE WITH FREIGHT CONTRACT. IT APPEARED, HE SAID, THAT WHENEVER THERE WAS A PROBLEM BETWEEN THE MINISTERS, CPV, AND HIERROPERU, THE SOLUTION WAS TO TAKE ACTION WHICH FORCED MARCONA TO BEAR THE COST. THIS APPROACH IS UNACCEPTABLE AND WILL PREVENT ANY ONGOING RELATIONSHIP FROM WORKING. WHAT IS TO PREVENT GOP AND JAPAN, UNDER THIS THEORY, FROM CONCLUDING A BILATERAL AGREEMENT THAT EXCLUDES MARCONA FROM SHIPPING?
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PERUVIAN COMMISSION APPEARED TO GET THE POINT.

4. EVENING COMMISSION MEETING. EVENING SESSION (REPORTED MORE FULLY SEPTEL) DEVOTED TO GOP PRESENTATION OF REVISED FIGURES ON BOOK VALUE, DEFENSE OF GOP POSITION, AND STRONG CRITIQUE BY FISHLOW OF THEIR PROGRESS TO DATE, COUPLED WITH VIRTUAL THREAT OF BREAKING OFF NEGOTIATIONS UNLESS GOP SHOWED MORE FLEXIBILITY, ACCEPTED BOOK

VALUE PLUS OR OTHER APPROACH CONSISTENT WITH U.S. LAW, AND CAME UP QUICKLY WITH FIRM \$30 MILLION. GOP FIGURES PRODUCED NET (LESS \$12.8 MILLION DEPLETION AND ABOUT \$11 MILLION INITIALLY) BOOK VALUE OF ABOUT \$9.2 MILLION, TO WHICH GOP ADDED \$3.6 MILLION IN CERTAIN INTRACOMPANY ACCOUNTS, ALONG WITH THE ESTIMATED \$6 MILLION MARCONA WILL REAP FROM FREIGHT CONTRACT. THESE FIGURES BASED ON VALUATION OF 49 PERCENT OF TOTAL MARCONA ASSETS. BROUSSET STRONGLY HINTED THAT DEPLETION CASE NOW IN COURTS MIGHT COME OUT IN MARCONA'S FAVOR, THE FIRST TIME ANY GOP OFFICIAL HAS SUGGESTED THAT ISSUE, WORTH MORE THAN \$18 MILLION, COULD BE A VEHICLE FOR INCREASING THE PAYMENT.

5. YATACO MADE LONG EMOTIONAL DEFENSE OF GOP RESULTS, CONTENDING THAT THEY INCORPORATED VARIETY OF ASSUMPTIONS FAVORABLE TO MARCONA, E.G., NO DEDUCTIONS FOR POOR MINING PRACTICES, INFLATION FACTOR, NO REDUCTION RELATED TO FACT THAT MUCH OF PROPERTY WOULD HAVE REVERTED FREE AND CLEAR TO STATE IN 1982, ETC. FISHLOW REPLIED BY CHIDING PERUVIANS FOR MAKING WHAT WAS IN EFFECT A RIDICULOUS OFFER; ANNUAL REVENUES FROM THE MINE FAR EXCEEDED ANY OF THE AMOUNTS EVER SOUGHT IN SETTLEMENT BY MARCONA FOR ITS VALUABLE PROPERTIES. HE ARGUED THAT THE DEPLETION SETTLEMENT HAD BEEN ACCEPTED BY MARCONA ON CONDITION THAT PHASE II BE COMPLETED; AS PROVED BY THE RAPIDLY ESCALATING INTEREST, THEY EXPECTED TO SETTLE THE MATTER IN THE CONTEXT OF COMPLETING PHASE II. HE NOTED THAT THIS CLAIM IS SIMILAR TO THE SPCC DEPLETION CLAIM NOW BEFORE THE COURTS; WILL WE OR OUR SUCCESSORS BE BACK IN PERU THREE OR FOUR YEARS FROM NOW BECAUSE THE GOP AGAIN SEEKS TO AVOID REALITY RATHER THAN CONFRONT IT? THERE REALLY IS NO POINT IN CONTINUING UNLESS THE GOP WILL SHOW FLEXIBILITY, ACCEPTING THE FACT THAT U.S. AS WELL AS PERUVIAN LAW HAS CONFIDENTIAL

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TO BE SATISFIED. THERE CAN BE NO REASONING WITH MARCONA UNTIL THE GOP COMES WITH A FIGURE THAT CAN BE THE BASIS FOR BEGINNING SERIOUS NEGOTIATIONS (\$30 MILLION). THE GOP GROUP NOTED THE ARGUMENTS, AGAIN PRESSED FOR A U.S. TEAM COUNTEROFFER.

6. IN COURSE OF DAY, MARCONA REPS (BRADFELD, ADRIAN) MET WITH HIERROPERU TO OBTAIN ADDITIONAL DATA REQUESTED BY TAX AUTHORITIES, THEN WITH TAX AUTHORITIES TO GO OVER FOUR TAX CLAIMS. SESSIONS WERE ATTENDED BY EMBASSY ECONOMIC OFFICER; MARCONA REPORTED THAT THEY WERE CORDIAL AND APPARENTLY PRODUCTIVE, WITH INDICATION THAT AUTHORITIES HAD BEEN INSTRUCTED TO PLAY IT STRAIGHT. U.S. GROUP MET WITH MARCONA REPS PRIOR TO MORNING SESSION AND AGAIN AFTER FIRST COMMISSION MEETING TO DISCUSS STRATEGY AND TO EXPLORE INDIRECT

PAYMENT MECHANISMS.

7. COMMENT: COURSE OF DAY'S MEETINGS PREDICTABLE; GOP HAD TO TEST US INITIALLY AND SEEK TO PROVE THAT TECHNICAL COMMISSIONS HAD DONE THEIR JOB. GOP COMMISSION SERIOUSLY BELIEVES THAT WHAT THEY HAVE COME UP WITH IS REASONABLE, YET AT SAME TIME CLEARLY REALIZE THAT THEY ARE NOWHERE NEAR AN ACCEPTABLE FIGURE.
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